

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY BONN
USMISSION BERLIN

C O N F I D E N T I A L STATE 111220

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E.O. 11652: GDS
TAGS: PGOV, WB, GW
SUBJECT: BERLIN DEMOCRATIC CLUB VS. SCHLESINGER
REF: (A) BERLIN 839; (B) BERLIN 837; (C) BONN 7706;
(D) BONN 7841; (E) BERLIN 828; (F) BONN 8086

1.SUMMARY: U.S. DISTRICT COURT ON MAY 24 GRANTED GOVTS
MOTION FOR POSTPONEMENT OF ANSWER UNTIL JUNE 6. COURT
ALSO GRANTED ORDER PUTTING OFF DECISION ON ALL DISCOVERY
(INTERROGATORIES, DEPOSITIONS) UNTIL THAT TIME. DEPART-
MENT HAS REVIEWED WITH ARMY VARIOUS AFFIDAVITS AND DOCU-
MENTS IN CASE, AND TRANSMITTED MOST OF ADDRESSEES COMMENTS
TO ARMY. WE EXPECT TO SEE REVISED DOCUMENTS EARLY THIS
WEEK AND HAVE BEEN TOLD THAT ALMOST ALL OUR POINTS HAVE
BEEN ACCEPTED. DEPARTMENT WILL BE SEEKING TO DEVELOP
AND IMPLEMENT NEW SYSTEM OF CONTROL ON USE OF SENSITIVE
SURVEILLANCE METHODS IN BERLIN. END SUMMARY

2. U.S. ATTY HAS OBTAINED ADDITIONAL 15 DAY EXTENSION
FOR FILING ANSWER TO COMPLAINT IN B.D.C. V. SCHLESINGER
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JUNE 6 NOW DATE FOR GOVERNMENT'S ANSWER. COURT ALSO

GRANTED GOVERNMENT'S REQUEST THAT DECISION ON PROCEEDING WITH PLAINTIFF'S EXTENSIVE WRITTEN INTERROGATORIES AND REQUEST FOR TAKING ORAL EVIDENCE IN GERMANY BE POSTPONED UNTIL THAT NEW HEARING. JUDGE INDICATED THAT IT WOULD PROBABLY BE NECESSARY FOR HIM TO EXAMINE IN CAMERA MATERIAL WHICH MIGHT ULTIMATELY BE SUBMITTED BY GOVERNMENT IN RESPONSE TO INTERROGATORIES ON CARRYING OUT OF WIRE TAP AND MAIL COVER IN F.R.G. AND THAT ISSUES OF NATIONAL DEFENSE AND SECURITY MIGHT BE INVOLVED. U.S. ATTY WILL WISH TO HAVE F.R.G. STATEMENT OF POSITION FOR USE ON JUNE 6 WHEN ISSUES OF DISCOVERY AND CONFIDENTIALITY ARE DISCUSSED FURTHER.

3. DEPARTMENT HAS COMMENTED TO ARMY GC ON FIRST DRAFT OF ARMY'S LEGAL MEMORANDUM, AND PASSED TO ARMY REFS (C) AND (D) CONTAINING JOINT EMBASSY-USBER COMMENT. WE HAVE PROVIDED THEM WITH REF (E), WHICH CONTAINED SUPPLEMENTAL FACTS ON BRADY AND HARRIS, AND WITH AN EDITED VERSION OF COMMENTS ON USCOB MEMORANDUM CONTAINED IN BERLIN 839, WITH CERTAIN CHARACTERIZATIONS DELETED. IN RETURN, WE HAVE RECEIVED DRAFT BOWEN AND DAVISON AFFIDAVITS (COPIES POUCHED EMBASSY AND USBER), AND PROVIDED OUR OWN COMMENTS.

4. FOR ADDRESSEES INFO, WE HAVE, ON THE DAVISON AFFIDAVIT, QUESTIONED REFERENCE TO STATIONING OF NUCLEAR WEAPONS (PARAGRAPH TWO) AND TO COUNTER-INTELLIGENCE BEING A NATO SOFA RESPONSIBILITY OF THE US (PARA 11). ON THE BOWEN AFFIDAVIT, WE QUESTIONED THE ACCURACY OF THE ASSERTION (PARA 2) THAT THERE WERE STRINGENT PROCEDURES FOR MONITORING ACTIVITIES IN BERLIN. WE ALSO QUESTIONED THE ACCURACY AND WISDOM OF HAVING BOWEN ASSERT THAT ANY COURT ORDER IN THIS LAWSUIT WOULD NECESSARILY IMPACT ON PROGRAMS OTHER THAN COUNTERSUBVERSION (PARAS 3 AND 4). WE SUGGESTED THAT "HOSTILE" FORCES (PARA 12) BE REPLACED BY "WARSAW PACT" FORCES AND THAT BERLIN BE DESCRIBED AS A SYMBOL OF THE SAME COMMITMENT TO TREATY OBLIGATIONS AND SELF-DETERMINATION AS IT IS DESCRIBED AS BEING IN THE USCOB AFFIDAVIT. IN PARA 13, IT SHOULD BE "BERLIN", NOT THE ALLIED SECTORS, WHICH IS SURROUNDED BY THE GDR. WE HAVE POINTED OUT THAT THE PENULTIMATE SENTENCE OF PARA 13, IN-

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ACCURATELY ASCRIBED HEIGHTENED THREAT IN THE FRG AND BERLIN TO "THE RELATIVELY FEW RESTRICTIONS ON THE TRAVEL" OF ORDINARY CITIZENS OF THE WARSAW PACT COUNTRIES. WE HAVE ALSO CRITICIZED THE BOWEN AFFIDAVIT FOR RELATING THE BOMBING AND OTHER INCIDENTS IN GERMANY TO FOREIGN INTELLIGENCE AGENTS (PARAS 14 AND 15). WE HAVE SUGGESTED THAT THE REFERENCE TO "STABILITY" BE DELETED FROM PARAGRAPH 20; THAT THE FOURTH SENTENCE OF PARA 27 BE REWRITTEN

TO SPEAK OF THE "ALLIES' MUTUAL COMMITMENT" AND THAT THE STATEMENT THAT "THE GERMAN AUTHORITIES WILL UNDERTAKE SUCH INTERCEPTS" (PARA 31(3) BE REVISED TO SAY THEY "MAY" DO SO. WE HAVE CRITICIZED AS MISLEADING THE REFERENCE IN PARA 31(3) TO "OFFICIALS AT THE EMBASSY REPRESENTING SEVERAL US GOVERNMENT DEPARTMENTS AND AGENCIES" PERFORMING AN INDEPENDENT REVIEW OF ALL SUGGESTIONS FOR INTERCEPTS. (WE UNDERSTAND THAT IT IS A DOD CIVILIAN IN THE EMBASSY WHO REVIEWS ALL REQUESTS, AND REFERS ONLY SOME TO A CIA CIVILIAN, BEFORE TRANSMITTAL TO THE FRG AND THAT ALL

THIS TAKES PLACE IN OCA, WHICH IS A DOD OFFICE IN THE EMBASSY.)

5. WITH REGARD TO THE ARMY'S LEGAL MEMORANDUM, DEPARTMENT HAD MADE COMPREHENSIVE COMMENTS OF ITS OWN PRIOR TO RECEIPT OF REFS (C) AND (D), WITH THEIR HELPFUL ANALYSIS. IN MANY RESPECTS OUR COMMENTS WERE IDENTICAL. HOWEVER, WE HAVE ONLY MENTIONED, BUT NOT EMPHASIZED THE MATTER OF INTERMIXING ENTIRE COUNTERINTELLIGENCE PROGRAM INTO THE CASE, SINCE THIS IS ULTIMATELY THE ARMY'S SHOT TO CALL. WITH REGARD TO THE SUGGESTION REF (C) PARA 9 THAT THE LANGUAGE BE RESTRICTED TO LEGAL AND ADMINISTRATIVE PROCEEDINGS "IN THE U.S.", WE HAVE CONCLUDED TOGETHER WITH ARMY STAFF, THAT SUCH A RESTRICTION COULD NOT STAND UP UNDER THE PRECEDENTS AND THAT WE WILL HAVE TO SEEK TO DRAW THE LINE BETWEEN WHOLLY U.S. PROCEEDINGS AND THOSE IN WHICH OTHER COUNTRIES ARE INVOLVED. WITH REGARD TO REF (D), PARA 9 RECOMMENDATION, SKEPTICISM HAS BEEN EXERCISED. A FURTHER POINT WE HAVE STRESSED WITH THE ARMY IS THAT STATEMENTS ABOUT THE FRG SHOULD BE RESTRICTED WHEREVER POSSIBLE TO STATEMENTS OF LAW, RATHER THAN FACT, IN ORDER NOT TO PUT FRG CONDUCT AT ISSUE IN THE CASE. CONFIDENTIAL

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6. WITH REGARD TO SUGGESTION MADE PARA 9, REF (C), AUTHORIZATION HAS BEEN RECEIVED TO DEVELOP AND IMPLEMENT SUCH A SYSTEM, AND DEPARTMENT WILL BE ADDRESSING THIS ISSUE SEPTEL. HOWEVER, ARMY GC STAFF ASSERT THAT NEW CONTROLS HAVE RECENTLY BEEN INSTITUTED (ALBEIT ALL MILITARY). WE WOULD APPRECIATE DESCRIPTION FROM BERLIN OF ANY SUCH NEW CONTROLS.

7. ARMY LAWYERS HAVE BEEN GENERALLY RECEPTIVE TO COMMENTS AND SUGGESTIONS OF DEPARTMENT AND ADDRESSEES AND HAVE INDICATED THAT MOST OF THE DESIRED CHANGES SHOULD BE REFLECTED IN THE REVISED PAPERS. WITH REGARD TO THE SPECIFIC CONCERNS EXPRESSED ABOUT THE USCOB AFFIDAVIT, ARMY GC STAFF LAWYERS WELCOMED THE CLEAR

REFERENCE TO MILITARY AUTHORITY UNDER 10608 IN CONNECTION WITH THE COUNTERINTELLIGENCE ACTIVITIES, AND EXPRESSED SOME PUZZLEMENT OVER ITS NOT HAVING BEEN IMMEDIATELY ACCEPTED IN BERLIN. THEY ALSO AGREED TO MAKE MODIFICATION SUGGESTED REF F. REVISED AFFIDAVIT WAS TRANSMITTED BY ARMY TO BERLIN FOR USCOB SIGNATURE. DEPT HAS JUST RECEIVED BERLIN 881 AND WILL BE TAKING UP REVISIONS WITH ARMY.

8. REVISED ARMY BRIEF AND AFFIDAVITS TO BE SUBMITTED AS EXHIBITS ALONG WITH ANSWER TO COMPLAINT SHOULD BE COMPLETED BY MAY 28. ARMY WILL BE SENDING SET OF DOCUMENTS FOR EMBASSY AND USBER AT SAME TIME IT SENDS SET TO USAREUR JAG. RUSH

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